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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 238 OF 2007

H.G. Janjikar & Ors. ... Petitioners

Versus

B.M.C. & Ors. ... Respondents

Mr. A.Y. Bookwala, Sr. counsel with Mr. Mohit Jadhav for Petitioner.

Ms.S.M. Modle for R. No. 1.

Mr. S.P. Thorat fore R. No. 2.

Mr. J.P. Sen with Mr. Jorhan Dubash i/by Pravin Mehta & Mithi & Co. for R. No. 3.

CORAM: F.I. REBELLO &
J.P.DEVADHAR, JJ.
DATED: JULY 25, 2007

P.C.:

. Rule. Heard forthwith.

. The Petitioner has approached this court apprehending that pursuant to notice served under Section 354 of the provisions of the B.M.C. Act, the building may be demolished. There is no dispute that the building is a cessed building under category A. Once the building is cessed building and under Category A, it is the responsibility of the Respondent No. 2 to protect the interest of the occupants in the manner provided under the provisions and the Act and rules and regulations.

. In the instant case, pursuant to communication now produced before us by the learned counsel for the respondent No. 2, it appears that respondent No. 2 had earlier taken steps calling on the state Government to acquire the land under the provisions of the Land Acquisition Act for the purpose of reconstruction. In the meantime, it appears that Respondent No. 3 who is landlord of the building has put forward a proposal before Respondent No. 2 for reconstruction of building. In view of that proposal the Respondent No. 2 herein by communication of 20.6.2007 has called on the State Government not to further proceed under the provisions of the Land Acquisition Act and to cancel the proposal earlier forwarded by Respondent No. 2.

. A controversy was sought tobe raised as to whether the landlord can develope under the provisions of the D.C. Regulation No. 33(7) and or App. III. In our opinion, considering that the power and duty is of respondent No. 2, it will be open to the respondent No. 2 if the proposal are received to consider the same according to law and thereafter to grant development permission if so permissible.

. In view of the apprehension of the Petitioner

that the building may be demolished, without any proposal and or rehabilitation of the persons like petitioners and or providing them alternative accommodation. We make it clear that no steps be taken to demolish the building without the sanction of Respondent No. 2. The continuance in the building is at the Petitioner’s risk.

. Another issue was raised regarding alternative accomodation. We make it clear that the issue of alternative accommodation will only arise if there is statuary duty under the Act and rules to so provide.

. Needless to say that it is always open to the Petitioner to approach this court if aggrieved by any order or decree that Respondent No. 2 may pass.

(J.P.DEVADHAR, J.) **(F.I.REBELLO, J.)**